

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CR. NO. 04-00053 DAE
)
Plaintiff,)
) MEMORANDUM OF LAW
vs.)
)
SILVER JOSE GALINDO,)
)
Defendant.)

MEMORANDUM OF LAW

Rule 14(a), Federal Rules of Criminal Procedure, directs:

If the joinder of offenses . . . in an indictment . . . appears to prejudice a defendant. . . the Court may order separate trials of counts. . . or provide any other relief that justice requires.

Although the Rules favor joinder of offenses against a Defendant in a single trial and will liberally be construed in favor of joinder, there is a point where due process steps in and directs a severance. In the case of Mr. Galindo, the Second Superceding Indictment reaches that point.

Applying this law to the facts of this case shows that the Second Superceding Indictment filed October 27, 2005 (Exhibit 1 attached hereto)(Docket #49) alleges 8 offenses of which 5 are distinct and separate involving discreet and dissimilar acts. Further, to allow a single trial of all of these offenses is prejudicial because proof that

a defendant is guilty of one offense will probably cause him to be convicted of a second offense. Further, the defendant may wish to testify in his own behalf on one offense but not another, forcing him to choose the unwanted alternative of testifying as to both, or testifying as to neither. Finally, the jury will be confused with the limiting instructions that must be given in view of the witnesses who are going to give testimony against the defendant in this case. Such prejudice warrants severance. U.S. Jordan, 112 F.3d, 14 (1st Cir. 1997).

In that regard, joinder of drug and firearms counts has been deemed improper where there is no common thread of an over-arching criminal scheme connecting the two crimes. U.S. v. Chavis, 296 F.3d 450,458 (6th Cir. 2002). Further, where several of the counts are discreet and dissimilar, joinder is improper. U.S. v. Richardson, 161 F.3d 728,732-733 (D.C. Cir. 1998). Similarly, joinder of drug and firearm counts has been deemed improper where the crimes were distinct and had no geographic or temporal commonality, and had no overlap in evidence. U.S. v. Terry, 911 F.2d 272, 276 (9th Cir. 1990).

DATED: Honolulu, Hawaii; February 21, 2007



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